

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**EWS Alabama, Inc.
Glencoe, Etowah County, Alabama
USEPA ID NUMBER ALD981020894**

CONSENT ORDER NO. 09-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and EWS Alabama, Inc. (hereinafter “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates an AHWMMA permitted hazardous waste treatment and storage facility in Glencoe, Etowah County, Alabama, that is assigned EPA Identification Number ALD981020894.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the Federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On December 16, 2008, a representative of the Department conducted a compliance evaluation inspection (CEI) of the Permittee's facility. That CEI and review of the Permittee's compliance showed the following:

- a. **Permit Condition III.E.2.** requires the Permittee to maintain an impervious coating which is free of cracks, or other deterioration on all containment system surfaces which may be exposed to hazardous waste or hazardous waste constituents (or releases of hazardous wastes or hazardous constituents). **The coatings on the containment systems in the Processing Area, Liquid Storage Area, Tank Farm, and Solid Processing Area were cracked and/or had deteriorated.**
- b. **ADEM Admin Code r. 335-14-5-.09(4)(a)** as incorporated by Permit Condition III.C.1. and Appendix H.9. of the Permit Application requires a container holding hazardous waste to always be closed during storage, except when it is necessary to add or remove waste. **Twenty-five plastic 55-gallon drums and two metal 55-gallon drums of hazardous waste located in the Processing Area and eleven 17-gallon plastic containers and one 1-cubic yard satellite accumulation container of hazardous waste located in the Solid Processing Area were open, and waste was not being added or removed.**
- c. **ADEM Admin. Code r. 335-14- 3-.03(5)(c)1.(ii)** requires the generator to mark his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. **One 1-cubic yard satellite accumulation container located in the Solid Processing Area was not labeled or marked with the words "Hazardous Waste" or other words identifying its content.**
- d. **ADEM Admin. Code r. 335-14-4-.05(5)** requires container storage areas at transfer facilities to be equipped with a containment system that is designed and operated in accordance with Rule 335-14-4-.05(5)(a), except as otherwise provided by Rule 335-14-4-.05(5)(b). **At the Permittee's transfer facility, the container storage area where containers holding waste that contain free liquids are stored was not equipped a containment system.**
- e. **ADEM Admin. Code r. 335-14-4-.05(3)** requires a transfer facility requires the facility to be able to demonstrate the length of time that the hazardous waste has been stored on-site. **The Permittee was unable to produce documentation or any other method that clearly demonstrates the length of time that hazardous waste containers have been stored onsite.**
- f. **ADEM Admin. Code r. 335-14-5-.02(5)** and Appendix B of the Permit Application require the owner or operator to prevent the unknowing entry, and minimize the possibility for unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Department that: 1. Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of the facility; and 2. Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of the facility, will not cause a violation of 335-14-5. **The gate between the active portion of the Permittee's facility and the "transfer facility" was open.**
- g. **ADEM Admin. Code r. 335-14-5-.02(5)(c)** and Appendix B of the Permit Application require that unless the owner or operator has made a successful demonstration under 335-14-5-.02(5)(a)1. and (a)2., a sign with the legend "Danger-Unauthorized Personnel Keep Out" must be posted at each entrance to the active portion of the facility, and at

other locations, in sufficient numbers to be seen from any approach to the active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility, and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger-Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous. **"Danger-Unauthorized Personnel Keep Out" signs were missing in areas along the fence surrounding the active portion of the Permittee's facility.**

- h. **ADEM Admin. Code r. 335-14-5-.09(5)** as incorporated by Permit Conditions I.C.10.e.iii. and III.F. requires the owners and operators of all hazardous waste facilities that store containers of hazardous waste to note the number and capacity of hazardous waste containers present and to document weekly inspections of the hazardous waste container storage area(s) in accordance with Rule 335-14-5-.02(6)(d). **The number and capacity of hazardous waste containers present in storage area were not noted in the weekly inspection logs.**
- i. **ADEM Admin. Code r. 335-14-5-.02(6)(d)** as incorporated by Permit Condition I.C.10.e.iii. requires the owner or operator to record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. **Repairs made or other remedial actions taken to correct problems observed during daily and weekly inspections of the hazardous waste container storage areas and the hazardous waste tank systems were not noted in the facility's inspection logs.**
- j. **ADEM Admin Code r. 335-14-5-.02(6)(a)** as incorporated by Permit Conditions III.F. and IV.H .requires the owner or operator to inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to, the release of hazardous waste constituents to the environment or a threat to human health. **The Permittee was unable demonstrate how it inspects the surface of the containment system beneath the metal slabs located in the Solids Processing Area.**
- k. **ADEM Admin Code r. 335-14-5-.03(2)** requires the facilities to be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment. **Metal slabs located in the Solids Processing Area were bolted to the floor. The bolts penetrated the secondary containment and did not seem to have an impervious coating.**

5. As a result of the CEI, the Permittee was issued a Notice of Violation, dated February 23, 2009, which cited violations of hazardous waste regulations that were discovered during the CEI.

6. On March 18, 2009, representatives of the Department conducted a focused compliance inspection (FCI) of the Permittee's transfer facility. The purpose of the FCI was to determine the Permittee's compliance with ADEM Administrative Code r. 335-14-4-.05, the

regulations pertaining to transfer facilities. That FCI and review of the Permittee's hazardous waste manifests showed the following:

Appendix H.13. of the Permit Application as incorporated by reference in Permit Condition III.C.1. states, "The sampling and staging of drums will not exceed 72 hours. All containers that are to be fingerprint tested will be marked with the arrival date and staged on the sampling dock or in container storage with an easily identifiable marking to designate that it still requires sampling." **A review of the Permittee's hazardous waste manifests and statements made by the facility representatives indicated that the Permittee has stored hazardous waste on-site outside the permitted storage area for more than 72 hours before commencing its acceptance process.**

7. On March 24, 2009 the Department received the Permittee's response (dated March 20, 2009) to the Notice of Violation received by the Permittee on February 25, 2009.

8. The Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. The Permittee neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

DEPARTMENT'S CONTENTIONS

10. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects

of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

11. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATION:** The Permittee failed to comply with AHWMMMA permit conditions, hazardous waste container standards, transfer facility standards, and general facility standards. These violations constitute a substantial deviation from the hazardous waste regulations. However, the Department is not aware of any health or safety threat or irreparable harm to the environment resulting from the violations.

(b) **THE STANDARD OF CARE:** The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee's failure to comply with regulatory requirements does not appear to have conferred an economic benefit.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is not aware of any other actions taken by the Permittee to minimize or mitigate the effects of the alleged violations upon the environment.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Previous operators at this site have a history of prior violations of a similar nature and extent. Based on Department records, the Permittee has no other historic record of violations of the AHWMMMA or ADEM Admin. Code div. 335-14.

(f) **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty proposed herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Use and Management of Containers	\$100 - \$12,000
Pre-Transportation Requirements	\$100 - \$11,000
Transfer Facility Requirements	NA
General Facility Requirements	\$100 - \$6,600
Preparedness & Prevention Requirements	\$100 - \$10,000
Permit Condition	\$100 - \$25,000

12. Permittee neither admits nor denies the Department's contentions.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Permittee agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.) Permittee agrees to pay to the Department a civil penalty in the amount of \$15,000.00 in monthly installments to be paid in full by no later than 180 days after the effective date of this Consent Order

Failure to make any payment according to the above schedule will automatically accelerate the penalty payment, which will become due in full immediately.

B. Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Permittee's name and address and the ADEM Administrative Order Number of this action.

C. The parties agree that, alternatively, the Permittee may elect to perform a Supplemental Environmental Project (hereinafter "SEP") which has been approved by the Department to offset a portion of the civil penalty referenced in Paragraph A above. This SEP may, at the sole discretion of the Department, offset a portion of the civil penalty at a ratio to be established by the Department based on the relative benefits afforded by a particular SEP proposal. The offset shall be \$1.00 for every \$3.00 spent on the SEP or other lower ratio approved by the Department, but in no event shall the civil penalty be offset below \$10,000.00. Should the Permittee elect to perform the SEP, the Permittee shall submit, within thirty days of the effective date of this Consent Order, a notification that it has elected to perform the SEP alternative and a written report describing the SEP project, including the SEP implementation schedule. The SEP project and implementation schedule may be implemented only if approved by the Department. Should the Permittee elect to perform the SEP project and it is approved by the Department, then the Permittee agrees to pay the Department a civil penalty in monthly installments, to be paid in full by no later than 180 days after the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty of \$10,000.00. Adequate documentation of all expenses related to the SEP shall be submitted to the Department for review and concurrence in determining the amount of the civil penalty to be offset no later than

thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Routine operating cost (i.e. those cost which would normally be incurred by the Permittee absent the requirements of the SEP) and costs related to routine compliance requirements, including the costs of complying with the requirements of the Consent Order, shall not be considered for offset of the civil penalty. Adequate documentation of all such expenses shall be submitted to the Department for review and concurrence in determining the amount of the penalty offset no later than thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Should the Permittee not offset the total amount of the penalty, the remaining amount of the penalty shall be due and payable within thirty days of the Department's notifying the Permittee of the remaining amount of penalty due to be paid. If the SEP is not acceptable to the Department, the total amount of the penalty shall be due within thirty days of the Permittee's receipt of the Department's notification that the SEP is not acceptable.

D. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Permittee agrees to comply with all terms, conditions, and limitations of its permit and the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

G. Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Permittee agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Permittee agrees to not object to such future orders, litigation, or enforcement action based on

the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Consent Order shall not affect Permittee's obligation to comply with any Federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

EWS Alabama, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

(Date Signed)

(Date Executed)